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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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STAAS & HALSEY LLP				
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WASHINGTON, DC 20005				
EXAMINER				
TRAN, MYLINH T				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/611,960

Applicant(s)

KURTENBACH, GORDON P.

Examiner

MYLINH TRAN

Art Unit

2179

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7 and 12-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7, 12-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 03/12/09 has been entered.

Applicant's amendment filed 03/12/09 has been entered and carefully considered. Claims 1, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23 have been amended. Claim 26 has been added. However, the limitations of the amended and new claims have not been found to be patentable over prior art of record; therefore, claims 1-3, 7 and 12-26 are rejected under the same ground of rejection as set forth in the Office Action mailed 11/12/08.

Claim Rejections - 35 USC § 112

The term "a selection from the menu may be made" in claims 1, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 23 is a relative term which renders the claim indefinite. The term "may be made" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The examiner will not be able to determine whether the selection is made with or without displaying the menus.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21 (2) of such treaty in the English language.

Claims 1-3, 7 and 12-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith [US. 5,721,853].

As to claims 1, 7, 12, 15-16, 23 and 26, Smith teaches a computer implemented method and corresponding apparatus for a menu selection comprising the steps/means for a display displaying menu comprising a radial marking menu portion simultaneously displayed with a linear menu portion (figure 3D, the radial marking menu portion on three quadrants: Tools, Ask AST and S/W Suites. These menu portions also are linear menu portions); a pointing device for indicating a type of selection by one of making a stroke having a direction and designating a location (figure 2, column 4, line 45 through column 5, line 3); and a computer connected to a display and said pointing device (figure 2, (23)), and determining selection criteria for the type and a menu selection based on a method of selection from one of the stroke and the

location (figure 3E, column 5, line 40 through column 6, line 6). Smith also teaches a display displaying a menu comprising a radial marking menu portion and a linear menu portion at figure 3D.

Smith also teaches two different portions of radial marking menu (figure 3D) and linear menu (figure 3C); a selection from the menu may be made without displaying the menu (The examiner will not be able to determine whether selection can be made with or without displaying the menu; therefore, Smith teaches the selection can be made with displaying the menu at figure 3E).

As to claim 2, Smith teaches the menu including at least nine selectable menu items (figure 3E).

As to claim 3, Smith teaches the menu including at least one menu item selectable based on the designating of only a location (figure 2, column 4, line 45 through column 5, line 3).

As to claims 13-14, 17, Smith teaches specifying selection criteria of a radial marking menu item when a method of selection is a stroke direction in the radial marking menu portion (column 5, lines 40 through column 6, line 6) and specifying selection criteria of a linear location menu item when a method of selection uses an end point of the stroke when the stroke is in a linear location selection region (column 5, lines 4-40).

Smith teaches the radial marking menu portion at figure 3D and the linear menu portion at figure 3C; a selection from the menu may be made without displaying the menu (The examiner will not be able to determine whether selection can be

made with or without displaying the menu; therefore, Smith teaches the selection can be made with displaying the menu at figure 3E).

As to claims 18-19, Smith shows making a stroke in a menu, selecting a displayed first item of the menu when the stroke terminates inside the displayed first item of the menu and selecting, based on the stroke, a second item of the menu, when the stroke does not terminate inside any displayed items of the menu (figure 3D, column 6, lines 27-55); a selection from the menu may be made without displaying the menu (The examiner will not be able to determine whether selection can be made with or without displaying the menu; therefore, Smith teaches the selection can be made with displaying the menu at figure 3E).

As to claims 20-22, Smith teaches a radial portion, a linear portion and a menu selection being based on a stroke, selection of a radial menu item of radial portion being suppressed when a pointer location is in the linear portion (column 5, lines 4-40), the radial menu item selection being reactivated when the pointer location exits a linear item in the linear portion and when the pointer location crosses a radial portion boundary line extending across the menu (column 5, line 40 through column 6, line 6); a selection from the menu may be made without displaying the menu (The examiner will not be able to determine whether selection can be made with or without displaying the menu; therefore, Smith teaches the selection can be made with displaying the menu at figure 3E).

AS to claim 24, Smith teaches the pointing device allowing a user to select by both making a stroke and designating a location and for indicating a type of selection by the user making one of a stroke having a direction for radial marking menu selection and designating a location (selection of each of the quadrants 202-208 (figure 3A-E) is by movement of the mouse pointer (23) into any of the four quadrants causes the corresponding secondary interface to be displayed. Moving the mouse pointer (23) over the quadrant 204 (figure 2) labeled "Ask AST" a cause a secondary interface comprising plurality of menus. These menus are displayed and selected by movement of the mouse pointer into any of the four quadrants (a stroke). The step of moving the mouse pointer over these quadrants is similar to the step of making a stroke having a direction and designating a location).

As to claim 25, Smith teaches the pointing device for indicating a type of selection by one of making a stroke having a direction and designating a location local to both the display and the pointing device (selection of each of the quadrants 202-208 (figure 3A-E) being by movement of the mouse pointer (23) into any of the four quadrants causes the corresponding secondary interface to be displayed is considered as a radial marking selection type. Selection of any menu from a linear menu portion 306d, figure 3D is considered as a linear selection type. Therefore, it is clear that Smith teaches determining selection criteria for the type and a menu item selection based on a method of

selection from the one of the stroke and the location).

Response to Arguments

Applicant has argued about the Declarations and Attachments filed 06/11/07.

The arguments have been considered but they are still not persuasive.

Therefore, the rejection has been maintained.

1) Both Declarations and Attachments, numbered paragraph 2 from the June, 2007 Declaration have been considered but they are ineffective to overcome the applied references.

The applicant fails to map the supported document of Exhibit B to each and every limitation in the invention claims.

The declaration and accompanying Attachment B do not provide enough evidences to support all the claimed limitations prior to the reference date, therefore do not support conception of the claimed invention. Although the Exhibit B shows the limitation of "a display displaying a menu comprising a radial marking menu portion simultaneously displayed with a linear menu portion", it is insufficient to support the feature of "determining selection criteria for the type and a menu item selection based on a method of selection from the one of the stroke and the location" in the Exhibit B. The applicant is request to clearly map the limitation with the information provided on page 20-21 of the Exhibit B.

2) Applicant has argued that Smith fails to teach "a selection from the menu may be made without displaying the menu". However, the examiner will not be able to determine whether selection can be made with or without displaying the menu; therefore, Smith teaches the selection can be made with displaying the menu at figure 3E.

Applicant also argued that Smith does not teach or suggest the feature of "two different portions of radial marking menu and linear menu". Applicant stated that Smith merely discusses a radial menu, not "a radial marking menu portion". However, the applicant's attention is directed to the cited passage "When a mouse pointer is moved into the spot GDE, a ring or collar having four radial quadrants representing menu items is displayed after waiting a user specified length of time. These radial menu items are displayed around the GDE. When the mouse pointer is subsequently moved into any of the four quadrants of the collar, a secondary rectangular interface hierarchically associated with the quadrant is displayed after waiting a user specified length of time." (abstract) It is clear that marking menus operating on the principle of the direction of cursor or pointer motion as being the basis for item selection. Therefore, Smith teaches the radial marking menu portion.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mylinh Tran. The examiner can normally be reached on Mon - Thu from 7:00AM to 3:00PM at 571-272-4141.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo, can be reached at 571-272-4847.

The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

571-273-8300

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mylinh Tran

Art Unit 2179

/Weilun Lo/

Supervisory Patent Examiner, Art Unit 2179

